

REMARKS / ARGUMENTS

Claims 12-21 and 31-37 are pending.

Claims 12, 17, 18 and 31 have been amended so that the full name of "CCI-779" is provided in its first appearance. This language is supported on page 1, lines 9-10. This is believed to address the objection under 35 USC 112, second paragraph. This amendment does not affect the scope of the claims. No new matter is added by this amendment.

Claims Rejections - 35 USC §103

The Examiner has rejected claims 12-21 and claims 31-37 under 35 USC §103(a) as unpatentable over *Azrolan*, US Patent Application Publication No. 2002/0013335 in view of US Patent No. 5,516,770 ("*Waranis*") and GB 237611 ("*Haeberlin*").

Applicants respectfully traverse this rejection.

A Rule 131 Declaration is being submitted herewith which swears behind the publication date of *Azrolan* and its counterpart PCT application, which published several weeks prior to the US application publication date. Thus, *Azrolan* is no longer available as an obviousness reference under 35 USC 102(a) and is only available under 35 USC 102(e). Since this application is commonly owned with *Azrolan*, *Azrolan* falls within the exception for 35 USC 103/102(e) prior art and is no longer available to be cited against the present application.

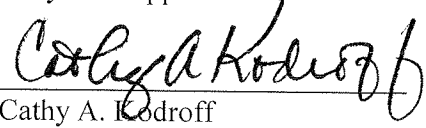
Waranis and *Haeberlin* do not teach or suggest formulations containing CCI-779 having the components of the present formulations. There is no teaching in the art of any problems associated with CCI-779 parenteral formulations much less the specific problems recognized by the invention. In the absence of recognition of the problem in the art, there can be no motivation in the art to look for a solution.

Reconsider and withdrawal of the rejection is requested.

Appln No. 10/626,943
Response to OA 03/17/2008
June 11, 2008

The Director is hereby authorized to charge any deficiency in any fees due with the filing of this paper, or credit any overpayment in any fees, to Deposit Account Number 08-3040.

Respectfully submitted,
HOWSON & HOWSON LLP
Attorneys for Applicants

By 
Cathy A. Kodroff
Registration No. 33,980
501 Office Center Drive, Suite 210
Fort Washington, PA 19034
Ph: (215) 540-9210
Fax: (215) 540-5818